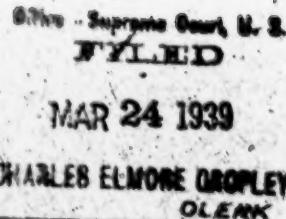


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Nos. 772 & 809

**In the Supreme Court of the United States**

OCTOBER TERM, 1938

~~H. P. HOOD & SONS, INC., AND NOBLE'S MILK  
COMPANY, PETITIONERS~~

v.  
THE UNITED STATES OF AMERICA AND HENRY A.  
WALLACE, SECRETARY OF AGRICULTURE

THE WHITING MILK COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA AND HENRY A.  
WALLACE, SECRETARY OF AGRICULTURE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST  
CIRCUIT

**MEMORANDUM FOR THE RESPONDENTS**

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MEMORANDUM FOR THE RESPONDENTS

Respondents join with petitioners in requesting this Court to grant writs of certiorari to the United States Circuit Court of Appeals for the First Circuit to review the final decrees of the District Court of the United States for the District of Massachusetts entered in these cases, on March 9, 1939, and March 10, 1939, respectively.

The decision of the District Court sustained the constitutionality of the Agricultural Marketing Agreement Act of 1937 and the validity of Order No. 4 issued pursuant thereto by the Secretary of Agriculture on February 7, 1936, as amended by a further order issued on July 28, 1937. Petitioners immediately appealed to the Circuit Court of Appeals for the First Circuit and the appeals have been docketed in that court. The petitions for writs of certiorari have been filed in this Court in advance of judgment in the Court of Appeals.

In view of the public importance of the issues presented by petitioners' assignments of error, we respectfully urge that the writs of certiorari be granted at the earliest practical time so that the cases may be heard at this term of the Court.

These cases present to this Court for the first time questions concerning the constitutionality of the Agricultural Marketing Agreement Act of 1937. The cases are two of thirty commenced in October 1937 in the District Court of the United States for the District of Massachusetts. All of the cases were tried together and the District Court ordered similar decrees entered in each case. A number of the other defendants have been allowed appeals to the Circuit Court of Appeals. In addition to these cases, another suit has been commenced against twenty other milk distributors for the purpose of enforcing Order No. 4 as amended.

In connection with the instant suits, it is important to note that approximately \$2,577,000 is now

impounded in the registry of the District Court under a temporary injunction issued by that Court on November 30, 1937, as superseded by an order of the Senior Circuit Judge for the First Circuit on December 8, 1937, and sustained, as so superseded, by the Circuit Court of Appeals for the First Circuit on June 24, 1937. Under the terms of the decrees of the District Court entered in these cases this money is to be distributed to approximately 15,000 dairy farmers in the New England states. However, the District Court, in deference to the opinion of the Circuit Court of Appeals superseding the temporary injunction (*H. P. Hood & Sons, Inc., et al. v. United States et al.*, 97 F. (2d) 677), has stayed its decree pending the final decision of this Court. If respondents are ultimately successful in these cases, the impounded moneys will be distributed in accordance with the decree. The public interest will be served by prompt distribution of these funds.

The importance of the issues involved in these cases is not limited to New England, which is the only area affected by Order No. 4 as amended. At present twenty-seven orders and licenses regulating the handling of milk and milk products are in effect, all of which are dependent on the constitutionality of the Agricultural Marketing Agreement Act of 1937. Twenty-four of these orders and licenses are applicable to different metropolitan areas and three are applicable to the nation as a whole. Litigation is now in progress in regard to

five of the other orders. In one of these cases, the District Court of the United States for the Northern District of New York, on February 23, 1939, declared the Agricultural Marketing Agreement Act of 1937 unconstitutional and declared invalid the Order of the Secretary of Agriculture issued thereunder regulating the handling of milk in the New York metropolitan area. A direct appeal to this Court was allowed pursuant to the provisions of the Act of August 24, 1937, on March 21, 1939, *United States v. Rock Royal Cooperative, Inc., et al.*, No. 771, present term.

The constitutional questions involved in the instant cases are in many respects substantially similar to the questions raised by the appeal in *United States v. Rock Royal Cooperative, Inc., et al.* When a case raising the same or similar questions is before this Court, it has frequently issued a writ of certiorari prior to judgment in a Circuit Court of Appeals. See, for example, *White v. Mechanics Securities Corporation*, 269 U. S. 283, 299; *Royal Insurance Co. v. Fleet Corporation*, 280 U. S. 320, 325; *Graham & Foster v. Goodcell*, 282 U. S. 409, 415; *Norman v. B. & O. R. Co.*, 294 U. S. 240, 243. There is an additional reason why this Court should issue a writ of certiorari in these cases at this time. The Master's report in the instant cases contains detailed findings with respect to the history and practices of the dairying industry in New England and the economic conditions which the Secretary's order is designed to remedy. These findings supply

a detailed economic background which should be of great assistance to this Court in the consideration of the broad constitutional questions raised both in these cases and in the New York case.

The various orders referred to above constitute an essential part of the present agricultural program and in the sections of the country devoted primarily to dairy farming constitute the principal programs operative under Federal farm legislation now in force. In addition, the Act authorizes the Secretary of Agriculture to issue, and he has issued, numerous other orders regulating the handling and marketing of various fruits, vegetables, and kindred agricultural products. It is of vital importance to both the agricultural interests and the Government that there be an early determination of the questions raised by these cases, which affect the validity of this program.

It is respectfully urged that the writs of certiorari be granted and that the cases be heard at the present term of the Court.

ROBERT H. JACKSON,  
*Solicitor General.*

MARCH 1939.